

### **REMARKS**

The pending Office Action address claims 1, 3, 7, 11, 12, 16-19, 25-28, 33, 34, and 52-62, all of which stand rejected.

#### ***Amendments to the Claims***

Applicants cancel independent claim 63. Applicants reserve the right to pursue this claim in a continuation application. No new matter is added.

#### ***Rejections Pursuant to 35 U.S.C. §102***

Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-63 are rejected pursuant to 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,423,826 of Coates et al. Applicants respectfully disagree.

#### **Independent claims 1 and 52**

Coates does not teach or suggest a guide member coupled to a distal end of an elongate shaft and including first and second lumens extending therethrough in fixed relation to one another, as required by independent claims 1 and 52. As explained in the previous response, Coates is directed to a drill guide including two arms (151, 152), each having a foot (157) with a thru-hole(158) extending therethrough. The Examiner argues that the feet and thru-holes are being considered as one unit and thus form the guide member and first and second lumens. Even if Applicants agree with this construction, the two thru-holes of Coates are not in *fixed relation* to one another. First, the feet are pivotally coupled to the arms (151, 152) and, as a result, the thru-holes are freely movable with respect to each other. Second, a threaded locking rod (155) extends through and threadably mates to the arms (151, 152) such that rotation of the locking rod (155) using an adjustment knob (154) pivots the arms. As the arms (151, 152) pivot with respect to one another, the distance between the thru-holes in the feet (157) increases or decreases. Thus, there are two reasons that the thru-holes extending through the feet are not in a fixed relation to one another.

Accordingly, independent claims 1 and 52, as well as claims 3, 7, 16-19, 25, 27, and 53-62 which depend therefrom, distinguish over Coates.

Independent claim 28

Coates fails to teach or suggest first and second opposed alignment tabs being adapted to non-fixedly interact with an edge of a spinal plate without engaging the spinal plate. In the response to arguments, the Examiner states that “it is unclear how a tab could *fixedly interact* and do so *without engaging the spinal plate*” and that this is counterintuitive. Applicants refer the Examiner to the claim language, which recites that the tabs ***non***-fixedly interact with the spinal plate without engaging the plate. Regarding the Examiner’s argument that this is also merely a functional limitation, Applicants point out that the reference must be able to perform the function in order to anticipate the claim. As stated in the previous response, Column 13, lines 9-12 of Coates states that “[a] small hook 161 on each foot 157 of the guide attaches to a notch 159 on each end of the plate 20. The locking mechanism 153 is then tightened to firmly attach the guide 150 to the plate 20.” Since the hooks clearly *engage* the notches to *firmly attach* the guide to the plate, the hooks cannot form tabs that non-fixedly interact a spinal plate. Even if the locking mechanism is not tightened to firmly attach the hooks to the plate, the mere fact that the foot and the plate are designed with features that cause engagement to occur therebetween prevent the device of Coates from being able to perform the function required by claim 28. Thus, Coates does not teach tabs that are adapted to non-fixedly interact with an edge of a spinal plate without engaging the spinal plate.

Accordingly, independent claim 28, as well as claim 33 which depends therefrom, distinguish over Coates.

Independent claim 63

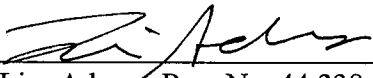
Claim 63 is canceled as noted above, thereby obviating the basis for this rejection.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,



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